



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 19 2016

**NOTICE OF POTENTIAL LIABILITY AND OFFER TO NEGOTIATE
FOR REMOVAL ACTION**
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Ethan R. Ware
McNair Law Firm, P.A.
1221 Main Street
Suite 1600
Columbia, South Carolina 29464

Re: Columbia Nitrogen Site
Charleston, Charleston County, South Carolina

Dear Mr. Ware:



This letter follows the general notice letter that the United States Environmental Protection Agency sent to your clients, James H. Holcombe and J. Holcombe Enterprises, L.P., on August 18, 2003, the Notice of Potential Liability and Offer to Negotiate for a Removal Action letter, dated October 13, 2011, and a Unilateral Administrative Order (UAO) issued on December 12, 2013, in connection with the Columbia Nitrogen Site (Site), located at 1801 Milford Street, Charleston, South Carolina 29405. The above-referenced correspondence notified James H. Holcombe and J. Holcombe Enterprises, L.P., of potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C. § 9607(a), for cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. The UAO directed your clients to conduct a non-time critical removal action at the Site. Pursuant to the UAO, your clients conducted a non-time critical removal action at the Site. The purpose of this correspondence is to convert the UAO to a voluntary Administrative Order on Consent (AOC) for the performance of the of remaining post site control work, implementation of future land use restrictions and to recover the payment of past response costs incurred by the EPA in connection with the Site.

The EPA has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Site. The EPA has spent, and is considering spending, additional public funds on actions to investigate and control such releases or threatened releases at the Site. Unless the EPA reaches an agreement under which a potentially responsible party (PRP) or parties will properly perform or finance such actions, the EPA may perform these actions pursuant to Section 104 of CERCLA.

SITE BACKGROUND

The Columbia Nitrogen Site is approximately 36.67 acres and is located in Charleston, South Carolina along the east bank of the Ashley River. It consists of a former fertilizer manufacturing facility which was operational from 1905 to 1972. In general, the historical operations conducted at this facility

involved the production of phosphate fertilizers by the acidification of phosphate rock. Sulfuric acid was produced and stored onsite in lead-lined acid chambers before it was reacted with phosphate ore to produce "superphosphate." The resultant superphosphate was mixed with other components to ultimately produce a more balanced agricultural grade fertilizer. The Site is bordered to the west by the Ashley River and to the south by Koppers Co., Incorporated. The Site is bordered to the east by Interstate 26 and King Street and bordered to the north by South Carolina Electric and Gas.

The property has changed ownership several times since 1905. From 1905 to 1966, the Site was owned and operated by the Planters Warehouse and Fertilizer Company (Planters), n/k/a Ross Development Corporation. In June 1966, Planters sold the property and the phosphate fertilizer manufacturing operations to Columbia Nitrogen Corporation. The Columbia Nitrogen's fertilizer granulations plant operated until 1972. In 1980, Columbia Nitrogen dismantled the buildings on Site, and in 1985, the property was sold to James H. Holcombe and J. Henry Fair (Holcombe and Fair). In 1986, Andlinger and Company, Incorporated acquired Columbia Nitrogen Corporation, and in 1989, Andlinger and Company, Incorporated merged with Arcadian Corporation. In 1989, Arcadian Corporation was acquired through a merger by PCS Nitrogen, Incorporated, a wholly-owned subsidiary of PCS Incorporated. During the time the Site was owned by Holcombe and Fair, construction activities on the land contributed to the movement and dispersal of hazardous substances at the Site. In December of 1987, Holcombe and Fair sold three acres of the Site to Max and Marlene Mast, who in turn transferred the property by deed to Allwaste Tank Cleaning, Incorporated (Allwaste) in January of 1999. Holcombe and Fair also deeded a right of way over 1.28 acres of the Site in 1991 by quit-claim deed with no right of reversion to the City of Charleston. An additional two acres was conveyed by Holcombe and Fair to Robin W. Hood, II (Hood) in January 1992. Hood, the current owner of this parcel of the Site, leased the property to Robin Hood Container Express, Incorporated (RHCE) for the storage of intermodal shipping containers. During the lease, RHCE's operations at the Site moved the soil and caused a release of hazardous substances at the Site. In 1997, James H. Holcombe transferred his property interest in the Site to J. Holcombe Enterprises, L.P. In 2002, J. Holcombe Enterprises, L.P., and J. Henry Fair transferred their remaining interest of 27.62 acres of the Site to Ashley II of Charleston, LLC with Ashley's knowledge of the past contamination. In May of 2008, Ashley purchased Allwaste's three acre parcel, also with knowledge of the past contamination on that portion of the Site.

A Superfund Preliminary Assessment/Site Inspection and a Remedial Investigation/Feasibility Study (RI/FS) have been conducted at the Site. The results of the RI/FS indicate soil surface and subsurface contamination including, but not limited to lead and arsenic, groundwater contamination and surface water contamination consisting of arsenic, lead and polycyclic aromatic hydrocarbon contamination. A non-time critical removal action at the Site consisted of the removal of surface and subsurface soils identified as being contaminated with arsenic and lead.

EXPLANATION OF POTENTIAL LIABILITY

PRPs under CERCLA include current and former owners and operators of the Site, as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6873 (RCRA), and other laws, PRPs may be obligated to implement response actions deemed necessary by the EPA to protect health, welfare or the environment. PRPs may also be liable for all costs incurred by the United States Government in responding to any release or threatened release at the Site. Such costs include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be required to pay for damages for injury to natural resources or for their

destruction or loss, together with the cost of assessing such damages. Where the Site conditions present an imminent and substantial endangerment to human health, welfare or the environment, the EPA may also issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$37,500 per day under Section 106(b) of CERCLA, or imposition of treble damages under Section 107(c)(3).

Based on information received during preliminary investigations of the Site, the Order and Opinion in the matter of Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., Civil Action No. 2:05-cv-2782-MBS, 2010 WL 4025885, and the decision of April 5, 2013, by the U.S. Court of Appeals, affirming the judgment of the district court, James H. Holcombe and J. Holcombe Enterprises, L.P., were determined to be a Potentially Responsible Parties (PRP) under §107(a)(2) of CERCLA at the above-referenced Site. The EPA believes that James H. Holcombe and J. Holcombe Enterprises, L.P., may be responsible parties of the Site property under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

Before the United States Government undertakes further response actions, the EPA requests that James H. Holcombe and J. Holcombe Enterprises, L.P. voluntarily perform the planned response actions described below pursuant to an EPA Administrative Settlement Agreement and Order on Consent and reimburse the EPA for past costs.

SITE RESPONSE ACTIVITIES

Respondents shall perform, at a minimum, all actions necessary to implement the Work required in the EPA approved Post-Removal Site Control Plan dated June 19, 2015. The actions to be implemented generally include, but are not limited to, the following: 1) Establish a framework to control future activities at the Site through institutional controls, and 2) Establish long-term monitoring plans for groundwater, revegetation, and erosion control and maintenance responsibilities.

WORKPLAN AND DRAFT ADMINISTRATIVE ORDER

A copy of the EPA approved Post-Removal Site Control Plan dated June 19, 2015, and draft Administrative Settlement Agreement and Order on Consent (AOC) are enclosed (Enclosures A and B). The EPA approved Post-Removal Site Control Plan dated June 19, 2015, and draft AOC are provided to assist you in negotiations with the EPA. Work conducted by PRPs must be conducted according to a signed AOC and an EPA-approved work plan.

DECISION NOT TO USE SPECIAL NOTICE

Under CERCLA Section 122(e), the EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between the EPA and the PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between the EPA and the PRP or PRPs are conducted. In this case, the EPA has decided not to invoke the Section 122(e) special notice procedures. The EPA's rationale for not invoking Section 122(e) special notice procedures is based on the Agency's removal policy regarding time-critical removals. Nonetheless, the EPA is willing to discuss settlement opportunities without invoking a moratorium, but will issue an order or initiate the response action as planned if such discussions do not lead to settlement expeditiously within thirty calendar days of receipt of this correspondence.

INFORMATION TO ASSIST RESPONSIBLE PARTIES

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PCS Nitrogen, Inc.
Mary Beth Deemer
Jones Day
500 Grant Street
Suite 4500
Pittsburg, Pennsylvania 15219-2514

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), the EPA has established the administrative record that contains documents that form the basis of the EPA's decision on the selection of a response action for the Site. This administrative record will be open to the public for inspection and comment.

RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, the Superfund Small Business Liability Relief and Brownfields Revitalization Act was signed into law. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/brownfields/laws/sblrbra.htm> and review guidance regarding these exemptions at <http://www.epa.gov/brownfields/laws/index.htm>.

The EPA has created a number of helpful resources for small businesses. The EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo.

PRP RESPONSE AND CONTACT

James H. Holcombe and J. Holcombe Enterprises, L.P., are encouraged to contact the EPA in writing within seven (7) days of receipt of this letter to indicate a willingness to participate in negotiations at this Site. If the EPA does not receive a timely response, the EPA will assume that James H. Holcombe and J. Holcombe Enterprises, L.P., do not wish to negotiate a resolution of his liabilities in connection with the response action, and that James H. Holcombe and J. Holcombe Enterprises, L.P., have declined any involvement in performing the response activities. Moreover, if James H. Holcombe and J. Holcombe Enterprises, L.P., do not contact the EPA to indicate a willingness to participate in the response actions at the Site and/or does not participate in the negotiations, James H. Holcombe and J. Holcombe Enterprises, L.P., may be held liable under Section 107 of CERCLA, for the cost of the response activities the EPA performs at the Site and for any damages to natural resources.

Response to this notice letter may be sent by email and should be sent to:

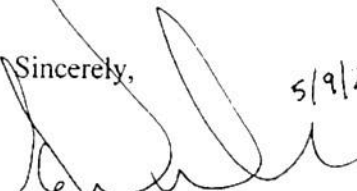
Kim A. Jones
Assistant Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303
Jones.KimA@epa.gov

If you have any technical questions relating to this matter, please direct them to Ken Mallary, On-Scene Coordinator, at (404) 562-8802. All legal questions should be directed to Kim A. Jones, Assistant Regional Counsel, at (404) 562-9553.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

Sincerely,

5/9/2012


James W. Webster, Chief
Emergency Response, Removal and
Prevention Branch

Enclosures (2)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Ethan R. Ware
McNair Law Firm, P.A.
1221 Main Street
Suite 1600
Columbia, SC ~~29201~~

2. Article Number
(Transfer from service label)

7013 2630 0000 0291 8305

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail®

☐ Priority Mail Express™

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ Collect on Delivery

4. Restricted Delivery? (*Extra Fee*)

☐ Yes

UNITED STATES POSTAL SERVICE



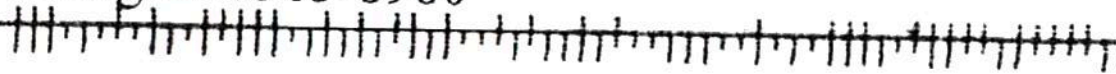
First-Class Mail
Postage & Fees Paid
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Permit No. G-10

- Sender: Please print your name, address, and ZIP+4® in this box •

OEA

Kim A. Jones
Assistant Regional Counsel
USEPA - 13 Floor
61 Forsyth Street
Atlanta, Georgia 30303-8960

12:42





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Ms. Mary Beth Deemer
Jones Day
500 Grant Street
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Pittsburg, Pennsylvania 15219

Re: Columbia Nitrogen Site
Charleston, Charleston County, South Carolina

Dear Ms. Deemer:



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SITE BACKGROUND

The Columbia Nitrogen Site is approximately 36.67 acres and is located in Charleston, South Carolina along the east bank of the Ashley River. It consists of a former fertilizer manufacturing facility which was operational from 1905 to 1972. In general, the historical operations conducted at this facility

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RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, the Superfund Small Business Liability Relief and Brownfields Revitalization Act was signed into law. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/brownfields/laws/sblbra.htm> and review guidance regarding these exemptions at <http://www.epa.gov/brownfields/laws/index.htm>.

The EPA has created a number of helpful resources for small businesses. The EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo.

PRP RESPONSE AND CONTACT

James H. Holcombe and J. Holcombe Enterprises, L.P., are encouraged to contact the EPA in writing within seven (7) days of receipt of this letter to indicate a willingness to participate in negotiations at this Site. If the EPA does not receive a timely response, the EPA will assume that James H. Holcombe and J. Holcombe Enterprises, L.P., do not wish to negotiate a resolution of his liabilities in connection with the response action, and that James H. Holcombe and J. Holcombe Enterprises, L.P., have declined any involvement in performing the response activities. Moreover, if James H. Holcombe and J. Holcombe Enterprises, L.P., do not contact the EPA to indicate a willingness to participate in the response actions at the Site and/or does not participate in the negotiations, James H. Holcombe and J. Holcombe Enterprises, L.P., may be held liable under Section 107 of CERCLA, for the cost of the response activities the EPA performs at the Site and for any damages to natural resources.

Response to this notice letter may be sent by email and should be sent to:

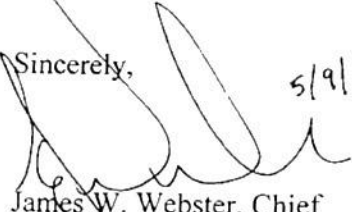
Kim A. Jones
Assistant Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303
Jones.KimA@epa.gov

If you have any technical questions relating to this matter, please direct them to Ken Mallary, On-Scene Coordinator, at (404) 562-8802. All legal questions should be directed to Kim A. Jones, Assistant Regional Counsel, at (404) 562-9553.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

Sincerely,

5/9/2016


James W. Webster, Chief
Emergency Response, Removal and
Prevention Branch

Enclosures (2)

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Street,
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Jones Day

City, State

500 Grant Street

Suite 4500

Pittsburg, PA 15219

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Suite 4500
Pittsburg, PA 15219

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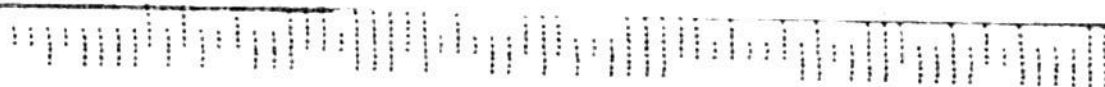
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Kim A. Jones
Assistant Regional Counsel
USEPA - 13 Floor
61 Forsyth Street
Atlanta, Georgia 30303-8960



WILLIAMS MULLEN

Ethan R. Ware, Esquire
Direct Dial: 803.567.4610
eware@williamsmullen.com

SETTLEMENT DISCUSSIONS

SUBJECT TO FRE 408

June 1, 2016

VIA EMAIL AND U.S. MAIL

Kim Jones, Esq.
United States Environmental
Protection Agency - Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Re: Columbia Nitrogen Superfund Site
Administrative Settlement Agreement and Order on Consent
for Removal Action
Charleston, Charleston County, South Carolina

Dear Ms. Jones:

On June 1, 2016, we received a letter executed May 9, 2016, by James W. Webster, Chief, Emergency Response and Removal Branch, United States Environmental Protection Agency, Region 4 ("EPA"), to James H. Holcombe, J. Holcombe Enterprises, L.P., and J. Henry Fair, Jr. (collectively "HFP") hereinafter the "Notices".¹ The purpose of the Notices is to convert Unilateral Administrative Order (December 12, 2013) (UAO) to a voluntary Administrative Order on Consent (AOC) for performance of remaining post site control work, implementation of future land use restrictions, and to recover payment of certain EPA past response costs in connection with the Columbia Nitrogen Superfund Site ("Site").

¹ The Notices were sent to an incorrect mailing address. Please revise your contact information for me to: Ethan Ware, Esq., Williams Mullen, 1441 Main Street, Suite 1250, Columbia, SC 29201.



June 1, 2016
Page 2

We are writing on behalf of HFP to indicate HFP's willingness to participate in negotiations to resolve remaining liabilities, if any, HFP may have at the Site. In the meantime, please feel free to call if you have any questions.

Sincerely,
WILLIAMS MULLEN

A handwritten signature in black ink, appearing to read "Ethan", written in a cursive style.

Ethan R. Ware

ERW/jt

cc: Mary Beth Deemer, Esq.
Sandy Kaczmarczyk, Esq.
Capers Barr, III, Esq.

WILLIAMS MULLEN

Ethan R. Ware, Esquire
Direct Dial: 803.567.4610
eware@williamsmullen.com

SETTLEMENT DISCUSSIONS

SUBJECT TO FRE 408

July 26, 2016

VIA EMAIL AND U.S. MAIL

Kim Jones, Esq.
United States Environmental
Protection Agency - Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Re: Columbia Nitrogen Superfund Site
Notice of Potential liability and
Offer to Negotiate for Removal Action

Dear Ms. Jones:

We are writing on behalf of J. Holcombe Enterprises, L.P., James H. Holcombe, J. Henry Fair, Jr., ("Holcombe and Fair") to request assistance responding to Notice of Potential Liability and Offer to Negotiate for Removal Action ("Letter") issued to potentially responsible parties (PRPs) of the Columbia Nitrogen Superfund Site ("Site"). Your prompt review of these matters will enable us to comply with deadlines in the Letter.

The Letter is addressed to Holcombe and Fair. It identifies only PCS Nitrogen, Inc. ("PCS") as "other PRPs at the Site". Does limiting the list of PRPs in this letter to Mr. Fair and PCS indicate no other PRPs are being requested to negotiate an Administrative Order or Consent (AOC) for the site, including but not limited to (1) Allwaste Tank Cleaning, Inc. (2) Robin Hood Container Express, Inc., (3) Robin W. Hood, III, (4) Ross Development Corporation ("Ross"), (5) Shareholders, Officers, and Directors of Ross found liable for costs of response at the Site, (6) J. Holcombe Enterprises, L.P., (7) J. Henry Fair (now deceased), (8) Ashley II of Charleston, LLC, or (9) Magnolia/ARC and affiliated entities? If not, what steps does EPA believe indicate "best efforts" to install institutional controls when neither Mr. Fair nor PCS the own Site?

On page 3, Letter, EPA requires settlement be completed "expeditiously within thirty calendar days of receipt of this correspondence." We believe it will be difficult to meet the deadline given holidays, work underway at the Site to implement the Non-time Critical Removal Action, and bankruptcy for Ashley II, of Charleston, LLC. We have met by telephone at least on four (4) occasions with the PRPs to develop a working group to enter the agreement with Holcombe and Fair, but are still working out details. Would EPA consider compliance with the Letter if PRPs identified in your letter were able to begin negotiations of the AOC within the next thirty (30) days?

Finally, can EPA state whether or not natural resource damages assessment (NRDA) has been completed for the Site? If so, can EPA share it with the participating PRPs.



11090582

July 26, 2016
Page 2

SETTLEMENT DISCUSSIONS

SUBJECT TO FRE 408

Thank you in advance for your assistance. If there are specific questions, feel free to ask.

Sincerely,
Williams Mullen



Ethan R. Ware

ERW/jt

cc: Cheryl Luke, Esq.

Jones, Kim A

From: Ware, Ethan <eware@williamsmullen.com>
Sent: Friday, May 27, 2016 1:38 PM
To: Jones, Kim A
Subject: RE: Notice of Liability: Columbia Nitrogen Site

Kim-

Thanks. Appreciate the update. Have a good Memorial Day.

Ethan.

Ethan Ware
Attorney
Williams Mullen
1441 Main Street, Suite 1250
Columbia, SC 29201
T 803.567.4610
F 803.567.4601
eware@williamsmullen.com
www.williamsmullen.com

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From: Jones, Kim A [mailto:Jones.Kima@epa.gov]
Sent: Friday, May 27, 2016 1:37 PM
To: Ware, Ethan
Subject: RE: Notice of Liability: Columbia Nitrogen Site

You are absolutely right! It went to McNair. I'm sorry! We will resend. Sorry about the oversight.

By the way, the EPA forwarded a 104(e) Request for Information, dated May 18, 2016, to Ashley II regarding the Site disturbance you reported.

From: Ware, Ethan [mailto:eware@williamsmullen.com]
Sent: Friday, May 27, 2016 1:21 PM
To: Jones, Kim A <Jones.Kima@epa.gov>
Subject: Notice of Liability: Columbia Nitrogen Site



Ms. Jones

We understand from PCS Nitrogen, LLC, the United States may have forwarded to my prior law firm a Notice of Liability for Post Removal Site Control Plan at the Columbia Nitrogen Site for the Holcombe Fair Parties. If so, you may want to revise contact information for me to the address below and resend the letter to us at the address below.

Thank you in advance for your assistance. Once we have reviewed the Notice, we will (of course) respond in accordance with the client directive.

Ethan.

Ethan Ware
Attorney
Williams Mullen
1441 Main Street, Suite 1250
Columbia, SC 29201
T 803.567.4610
F 803.567.4601
eware@williamsmullen.com
www.williamsmullen.com

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Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Monday, July 25, 2016 4:36 PM
To: Luke, Cheryl (ENRD)
Cc: McGuffin, Stan; Karl.Fingerhood@usdoj.gov; Jones, Kim A; Mallary, Ken; Mary Beth Deemer
Subject: Re: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4
Attachments: PX 013 Tax map 466.pdf; Fig04_Total_Exc_Depth.pdf

Cheryl,

Thank you for your response regarding the institutional controls at the Columbia Nitrogen Site ("Site"). PCS understands that EPA and DOJ are considering the extent to which institutional controls should be recorded at the Allwaste Tank Cleaning and Robin Hood parcels. I am writing on behalf of PCS to provide information regarding the extent of the response action undertaken at the Site, which is relevant to EPA and DOJ's consideration of that issue.

The remediation work done by PCS and Holcombe and Fair pursuant to the terms of the 106 Order issued by EPA extends into all three parcels at the Site, including the 3-acre parcel formerly owned by Allwaste Tank Cleaning and the 2-acre parcel owned by Robin Hood, III. The attached map prepared by AECOM, the environmental consulting firm that implemented the response action, shows the depths to which contaminated soils were excavated at the Site and shows excavations extended into all three parcels. The attached tax map shows the TMS numbers of the impacted parcels: 466-00-00-018 (the former Holcombe and Fair parcel), 466-00-00-051 (the former Allwaste parcel), and 466-00-00-055 (the Robin Hood parcel).

As you know, the institutional controls that have been approved by EPA and DHEC for the Site have only been recorded on the largest of these three parcels (with TMS No. 466-00-00-018), but given that contamination was remediated on all three parcels, the protections provided by the controls is needed on all three. The parcels were remediated to the same clean up levels and should not be put to residential use. In addition, given that the cap and remediated soils extend into all three parcels, the institutional controls are needed to ensure that the cap is not damaged and that EPA and DHEC receive notice before sub surface soils are disturbed. PCS, therefore, requests that the same institutional controls recorded on the largest parcel be recorded on all three parcels. That approach complies with the terms of the Post-Removal Site Control Plan and the 106 Order.

As you know, the Allwaste parcel will be conveyed in the bankruptcy proceeding filed by Ashley. The Plan for Reorganization filed by Debtors is expected to address the marketing and sale of the parcels that are part of the Site including the Allwaste parcel. For that reason, it would be helpful to the creditors and Debtors to have resolution regarding the need for ICs on that parcel before the Plan for Reorganization is filed.

Thank you in advance for your consideration of this information.

Sandi

Sandra Kaczmarczyk

ALTON ASSOCIATES PLLC

4443 ALTON PLACE N.W.

WASHINGTON, DC 20016

(202) 344-5339

sandra@altonassoc.com

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On Thu, Jul 14, 2016 at 3:34 PM, Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov> wrote:

The original intent of the United States was to file a Declaration of Covenants and Restrictions (ICs) covering only the major 27 acre plus parcel owned by Ashley II of Charleston, as reflected in the IC's filed by Harrison on July 7, 2016. As regards the Robinhood parcel, the United States may prepare IC's at a later time. We don't want to unnecessarily encumber the property of a non-PRP. EPA is currently looking into the nature and extent of the contamination at the Robinhood parcel in order to craft limited IC's. As regards the Allwaste parcel, no response actions were conducted on that parcel and the United States is aware of no contamination which necessitates the filing of ICs. However, EPA is also looking into the necessity for IC's at the Allwaste parcel as well.

If the parties would like to provide information to the EPA regarding the contamination at the Robinhood and Allwaste parcels to inform our review, the parties may do so.

If EPA prepares IC's for the Robinhood parcel, it will be the responsibility of Ashley II, PCS Nitrogen, and Holcomb and Fair to obtain the consent of Robinhood and to file the IC's.

Cher Luke

From: McGuffin, Stan [<mailto:smcguffin@hsblawfirm.com>]

Sent: Monday, July 11, 2016 5:15 PM

To: Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>; Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>

Cc: Harrison Penn (hpenn@mccarthy-lawfirm.com) <hpenn@mccarthy-lawfirm.com>; Sandra Kaczmarczyk <sandra@altonassoc.com>

Subject: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

Harrison Penn sent us a copy of the Institutional Controls ("ICs") recorded July 7, a copy of which is attached. A question has arisen regarding the description of the property subject to the ICs. The property subject to the recorded ICs is described on Exhibit A to the recorded document. Exhibit A is a legal description of the main tract (27 acres +/-) which bears TMS # 466-00-00-018. Exhibit B to the recorded document contains a shaded area outlined in a bold line which contains what is commonly referred to as the "CNC Site". This outlined area on Exhibit B includes TMS # 466-00-00-018 as well as TMS #466-00-00-051 (the 3-acre parcel formerly owned by Allwaste and sold to Ashley) and TMS # 466-00-00-055 (the 2-acre parcel owned by Robin Hood). All 3 parcels were subject to the 106 Order and are within the remediation area. A copy of the tax map for the 3 tracts is also attached for ease of reference. I have inquired of Harrison Penn if he knew why only TMS # 466-00-00-018 was included in Exhibit A for the description of the property being subject to the ICs. He informed me that he did not know the answer but that EPA had approved the legal description used on Exhibit A. Harrison did point out to me that second "Whereas" clause in the Recitals of the IC document contained only a reference to one deed into Ashly, which appears to be the deed for TMS # 466-00-00-018 and that the legal description for Exhibit A was pulled from that deed. Can you let us know why TMS #466-00-00-051 (the 3-acre parcel formerly owned by Allwaste and sold to Ashley) and TMS # 466-00-00-055 (the 2-acre parcel owned by Robin Hood) were not included as tracts that are subject to the recorded ICs? Thank-you in advance for your input on this question.

**Haynsworth
Sinkler Boyd, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

Stanley H. McGuffin | Attorney | Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Phone: [803.779.3080](tel:803.779.3080) | Fax: [803.765.1243](tel:803.765.1243) | Direct: [803.540.7836](tel:803.540.7836)

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Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Tuesday, July 26, 2016 9:09 AM
To: Jones, Kim A
Cc: Luke, Cheryl (ENRD); McGuffin, Stan; Karl.Fingerhood@usdoj.gov; Mallary, Ken; Mary Beth Deemer
Subject: Re: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

Thank you.

Sent from my iPhone

On Jul 26, 2016, at 8:53 AM, Jones, Kim A <Jones.Kima@epa.gov> wrote:

Thank you Sandra. I will start drafting the IC's for these parcels. The Allwaste IC will go to Ashley for filing. I will send the Robin Hood ICs to the PRP Group to arrange for filing the Robin Hood parcels with that owner. The attorney representing Robin Hood is Tim Bouch. The PRP Group should contact him for filing the IC's on the Robin Hood parcel.

From: Sandra Kaczmarczyk [<mailto:sandra@altonassoc.com>]
Sent: Monday, July 25, 2016 4:36 PM
To: Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov>
Cc: McGuffin, Stan <smcguffin@hsblawfirm.com>; Karl.Fingerhood@usdoj.gov; Jones, Kim A <Jones.Kima@epa.gov>; Mallary, Ken <Mallary.Ken@epa.gov>; Mary Beth Deemer <MBDeemer@jonesday.com>
Subject: Re: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

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Sandi

Sandra Kaczmarczyk

ALTON ASSOCIATES PLLC

4443 ALTON PLACE N.W.

WASHINGTON, DC 20016

(202) 344-5339

sandra@altonassoc.com

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Cher Luke

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Sent: Monday, July 11, 2016 5:15 PM
To: Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>; Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>
Cc: Harrison Penn (hpenn@mccarthy-lawfirm.com) <hpenn@mccarthy-lawfirm.com>; Sandra Kaczmarczyk <sandra@altonassoc.com>
Subject: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

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not included as tracts that are subject to the recorded ICs? Thank-you in advance for your input on this question.

Stanley H. McGuffin | Attorney | Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
<image001.gif> Phone: [803.779.3080](tel:803.779.3080) | Fax: [803.765.1243](tel:803.765.1243) | Direct: [803.540.7836](tel:803.540.7836)

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Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Tuesday, November 22, 2016 4:13 PM
To: Jones, Kim A
Cc: Luke, Cheryl (ENRD); McGuffin, Stan; Karl.Fingerhood@usdoj.gov; Mallary, Ken; Mary Beth Deemer
Subject: Re: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

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Sent: Monday, July 25, 2016 4:36 PM

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Cc: McGuffin, Stan <smcguffin@hsblawfirm.com>; Karl.Fingerhood@usdoj.gov; Jones, Kim A <Jones.Kima@epa.gov>; Mallary, Ken <Mallary.Ken@epa.gov>; Mary Beth Deemer <MBDeemer@jonesday.com>

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ATTORNEYS AND COUNSELORS AT LAW

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Cc: Harrison Penn (hpenn@mccarthy-lawfirm.com) <hpenn@mccarthy-lawfirm.com>; Sandra Kaczmarczyk <sandra@altonassoc.com>
Subject: Ashley II: Question re Recorded ICs on CNC Site/HSB File 35894.4

Harrison Penn sent us a copy of the Institutional Controls (“ICs”) recorded July 7, a copy of which is attached. A question has arisen regarding the description of the property subject to the ICs. The property subject to the recorded ICs is described on Exhibit A to the recorded document. Exhibit A is a legal description of the main tract (27 acres +/-) which bears TMS # 466-00-00-018. Exhibit B to the recorded document contains a shaded area outlined in a bold line which contains what is commonly referred to as the “CNC Site”. This outlined area on Exhibit B includes TMS # 466-00-00-018 as well as TMS #466-00-00-051 (the 3-acre parcel formerly owned by Allwaste and sold to Ashley) and TMS # 466-00-00-055 (the 2-acre parcel owned by Robin Hood). All 3 parcels were subject to the 106 Order and are within the remediation area. A copy of the tax map for the 3 tracts is also attached for ease of reference. I have inquired of Harrison Penn if he knew why only TMS # 466-00-00-018 was included in Exhibit A for the description of the property being subject to the ICs. He informed me that he did not know the answer but that EPA had approved the legal description used on Exhibit A. Harrison did point out to me that second “Whereas” clause in the Recitals of the IC document contained only a reference to one deed into Ashly, which appears to be the deed for TMS # 466-00-00-018 and that the legal description for Exhibit A was pulled from that deed. Can you let us know why TMS #466-00-00-051 (the 3-acre parcel formerly owned by Allwaste and sold to Ashley) and TMS # 466-00-00-055 (the 2-acre parcel owned by Robin Hood) were not included as tracts that are subject to the recorded ICs? Thank-you in advance for your input on this question.

Stanley H. McGuffin | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
<image002.jpg> Phone: [803.779.3080](tel:803.779.3080) | Fax: [803.765.1243](tel:803.765.1243) | Direct: [803.540.7836](tel:803.540.7836)

[website](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)

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Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Wednesday, February 08, 2017 1:35 PM
To: Jones, Kim A
Cc: Luke, Cheryl (ENRD); Finch, Rhelyn; Karl.Fingerhood@usdoj.gov; cgb@barrungermcintosh.com; McGuffin, Stan
Subject: Re: Call Schedule

Adding Rhelyn now.

On Wed, Feb 8, 2017 at 1:29 PM, Jones, Kim A <Jones.Kima@epa.gov> wrote:

Yes indeed, I hope that info helps. Please add our redevelopment attorney to the invite-Rhelyn Finch. Thank you.

From: Sandra Kaczmarczyk [<mailto:sandra@altonassoc.com>]
Sent: Wednesday, February 08, 2017 1:28 PM
To: Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov>
Cc: Karl.Fingerhood@usdoj.gov; Jones, Kim A <Jones.Kima@epa.gov>; cgb@barrungermcintosh.com; McGuffin, Stan <smcguffin@hsblawfirm.com>
Subject: Re: Call Schedule

Thank you all for making time for us again. And Kim, thank you very much for sending the information on the pre-purchase calls you have with potential buyers. That is part of the process we are trying to better understand. We are taking a look at the information.

Stan, Capers and I can all talk at 2pm tomorrow. I will send an invite with a call in number.

Sandra Kaczmarczyk

ALTON ASSOCIATES PLLC

4443 ALTON PLACE N.W.

WASHINGTON, DC 20016

(202) 344-5339

sandra@altonassoc.com

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On Wed, Feb 8, 2017 at 12:49 PM, Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov> wrote:

Hey Sandra:

We are available today until 3:00 p.m. and tomorrow between 2:00 and 5:00 p.m.

Thanks,

Cher

Jones, Kim A

From: Ware, Ethan <eware@williamsmullen.com>
Sent: Monday, January 02, 2017 8:24 AM
To: Jones, Kim A; Mary Beth Deemer; cheryl.luke@usdoj.gov; Mallary, Ken
Cc: Karl.Fingerhood@usdoj.gov; Waters, Melissa; Johnson, MaryC
Subject: RE: Columbia Nitrogen Superfund Site [IWOV-IWOVRIC.FID1393031]

Ms. Jones-

We look forward to your call or email.

Ethan Ware.

Ethan R. Ware | Attorney | Williams Mullen

1441 Main Street, Suite 1250 | P.O. Box 8116 | Columbia, SC 29201

T 803.567.4610 | C 803.427.7624 | F 803.567.4601 | eware@williamsmullen.com | www.williamsmullen.com

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From: Jones, Kim A [mailto:Jones.Kima@epa.gov]
Sent: Friday, December 30, 2016 11:08 AM
To: Mary Beth Deemer; cheryl.luke@usdoj.gov; Mallary, Ken
Cc: Ware, Ethan; Karl.Fingerhood@usdoj.gov; Waters, Melissa; Johnson, MaryC
Subject: RE: Columbia Nitrogen Superfund Site

Mary Beth, Et al.,

Thank you for your email regarding your client's concerns for the sampling plans of Potentially Responsible Party (PRP), Ashley II of Charleston for the Columbia Nitrogen Site, as well, as assertions you indicate were made during the Ashley bankruptcy proceedings.

Due to the holiday, a good number of the enforcement team for the Columbia Nitrogen Site are out on annual leave. In this regard, the government will meet the week of January 3rd to discuss your concerns and identify days and time to meet with you the week of January 9th.

Again, thank you and we will be in contact with you regarding available meeting days next week.

Kim A. Jones
Assistant Regional Counsel
U.S. EPA, Region 4

From: Mary Beth Deemer [mailto:MBDeemer@JonesDay.com]
Sent: Thursday, December 29, 2016 5:15 PM
To: Jones, Kim A <Jones.Kima@epa.gov>; cheryl.luke@usdoj.gov
Cc: eware@williamsmullen.com
Subject: Columbia Nitrogen Superfund Site

CONFIDENTIAL - SUBJECT TO F.R.E. 408

Dear Kim and Cheryl:

This email is submitted on behalf of PCS Nitrogen, Inc. ("PCS") and the Holcombe and Fair entities ("H&F"). As you may or may not know, with funding from Magnolia ARC Lender, LLC ("Magnolia"), Ashley II of Charleston, LLC ("Ashley II") has recently petitioned the bankruptcy court to spend \$75,000 on testing of soils and groundwater at the Columbia Nitrogen Site ("CNS"). We are concerned the work will irreparably disturb the controls installed as part of the Unilateral Administrative Order and are surprised Ashley II and Magnolia now have this type of money to spend on the site where there was none available to perform the UAO.

The purpose of this email is twofold. **First**, PCS and H&F believe, based on statements made in the bankruptcy proceedings in a proposed Application to name an environmental consultant, that Ashley II is once again distorting the nature of the removal action conducted on the Site and purposely confusing the record in order to mislead the Court into thinking the site cleanup was intended to be to a residential level, and we have not yet completed that task. Ashley II's Application significantly mischaracterizes key aspects of the Site remediation:

- In its Application, Ashley II states that the highest and best use for the Site is mixed commercial/residential. The reality is that the land at the Site has always been used for industrial purposes. Indeed, the only parcel of land at the Site currently in use is zoned heavy industrial and is being used as a container storage yard.
- The Ashley II Application states that private party CERCLA litigation forced Ashley II to halt its development of the property; Ashley II does not state that it filed the CERCLA cost recovery action, not EPA, PCS, or H&F, and that Ashley II only abandoned its development plans after the Court found it liable under CERCLA for response costs and for contractual indemnity resulting in Ashley II owing 24% of any cleanup costs incurred by Ashley II. Ashley II significantly misrepresents the circumstances surrounding it abandoning development of the Site.
- Ashley II also claims work plans and completion reports prepared as a result of the UAO identified cleanup levels appropriate for industrial use, suggesting that the parties cleaning up the Site made the decision to clean up the Site to those levels. Nowhere does Ashley II acknowledge that remediation levels for the Site were established by EPA after a multi-year investigation of the Site. EPA issued the UAO directing PCS, H&F and Ashley II to implement the response action plan that EPA executed in 2011, and, consistent with the use of the land at the Site, that plan expressly provides for the Site to be cleaned up to industrial\commercial levels. The SOW appended to the UAO specified the cleanup levels established by EPA for the Site, and institutional controls required by the UAO restrict activities on the Site and expressly prohibit residential use of the Site.

PCS and H&F believe that Ashley II's Application is designed to mislead the bankruptcy court and any potential future buyer concerning liability for the costs of cleaning up the Site to residential standards and to force the cleanup to be revised to meet residential standards while the UAO remains in effect. PCS's and H&F's beliefs in this regards are confirmed by the scope of work for the requested sampling at the Site, which goes well beyond that designed to estimate the volume of potentially impacted soil beneath the road and

concrete pads. PCS and H&F believe that it is important to correct the record and would like EPA and DOJ to support their efforts.

Importantly, the Application is also a violation of the UAO in two respects. The expressed purpose of the Application is to determine if the Site can be used for residential purposes, but that use is prohibited by EPA's UAO. The UAO orders Ashley II to remove all contaminants to industrial standards and prohibits use of the property for "residential purposes" after the work is complete regardless of a downstream purchasers desire or the Bankruptcy Court's intent. The UAO states in Part VI, the parties are to develop and enforce a Post Removal Site Control Plan, which is currently being enforced at the Site. See, UAO Part VI, p.9. The EPA UAO then states Ashley II and PCS and HFP are "prohibit[ed from] the use of the Site property for residential purposes...and restrict[ed from] any intrusive activities that will jeopardize the integrity of the removal action." In fact, "the party conveying [any] interest [in the property] shall require the transferee comply with the [UAO and the PRSCP]." UAO, Part VI, Section 3.3. The UAO concludes by ordering "land use restrictions [are] required on the property deed..." set out in the PRSCP. Revised Enforcement Action Memorandum, Part VII. Those restrictions have now been recorded and prohibit residential use of the Site.

In addition, the Application violates the UAO by proposing that Ashley II removes from EPA (and PCS and HFP) any control or authority over the cleanup technology now in place and for maintenance of the Site going forward. The UAO is quite specific: Access to the Property and all institutional controls are solely within the power of the EPA and PCS/HFP. In fact, access is only to be provided by EPA or PCS/HFP. See, UAO, Part VI, Section 4. Only EPA can determine if additional investigation is necessary under the UAO, Parts XIII and XVII, so the work Ashley II proposes in its Application—which is plainly intended to investigate residential use of the property—violates those limitations. The PSRCP prohibits further disturbance of the site control technology without EPA and PCS/HFP approval precisely to avoid such a result.

Second, since there is now more clarity regarding the funds that EPA will receive out of the bankruptcy proceeding, PCS and H&F would like to move forward with converting the existing UAO to a CERCLA 107 Administrative Order on Consent resolving the parties' remaining liability for the Site.

As a first step, we would like to schedule a conference call with EPA and DOJ as soon as your schedules permit. Please let us know some dates/times in the next week or so which would work for you for such a call.

In the meantime, if you have any questions or would like to discuss this matter in more detail, please do not hesitate to contact Ethan or me.

Happy New Year.

Regards,

Mary Beth

Mary Beth Deemer

Partner

JONES DAY® - One Firm WorldwideSM

500 Grant Street, Suite 4500

Pittsburgh, PA 15219

Office +1.412.394.7920

Mobile +1.412.719.6923

mbdeemer@jonesday.com

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=====

Jones, Kim A

From: Amy Melvin <amelvin@leathbouchlaw.com>
Sent: Monday, March 27, 2017 9:44 AM
To: Jones, Kim A
Subject: Automatic reply: Robin Hood Container Express - Institutional Controls

I am out of the office on maternity leave. If you need immediate assistance, please contact my paralegal Cara Scott at cscott@leathbouchlaw.com or (843) 937-8811. Thank you.

Jones, Kim A

From: Jones, Kim A
Sent: Tuesday, February 21, 2017 9:09 AM
To: 'Mary Beth Deemer'
Subject: RE: Columbia Nitrogen Site

Will do, however, I can't forward it until this Friday.

From: Mary Beth Deemer [mailto:MBDeemer@JonesDay.com]
Sent: Friday, February 17, 2017 3:59 PM
To: Jones, Kim A <Jones.Kima@epa.gov>
Subject: Columbia Nitrogen Site

Dear Kim:

Would you please send me a Word version of the Administrative Settlement Agreement and Order on Consent which you forwarded to PCS and Holcombe and Fair last summer.

Many thanks and have a nice weekend.

Kind regards,

Mary Beth

Mary Beth Deemer
Partner
JONES DAY® - One Firm WorldwideSM
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
Office +1.412.394.7920
Mobile +1.412.719.6923
mbdeemer@jonesday.com

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=====

Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Wednesday, February 08, 2017 1:35 PM
To: Jones, Kim A
Cc: Luke, Cheryl (ENRD); Finch, Rhelyn; Karl.Fingerhood@usdoj.gov; cgb@barrungermcintosh.com; McGuffin, Stan
Subject: Re: Call Schedule

Adding Rhelyn now.

On Wed, Feb 8, 2017 at 1:29 PM, Jones, Kim A <Jones.Kima@epa.gov> wrote:

Yes indeed, I hope that info helps. Please add our redevelopment attorney to the invite-Rhelyn Finch. Thank you.

From: Sandra Kaczmarczyk [mailto:sandra@altonassoc.com]
Sent: Wednesday, February 08, 2017 1:28 PM
To: Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov>
Cc: Karl.Fingerhood@usdoj.gov; Jones, Kim A <Jones.Kima@epa.gov>; cgb@barrungermcintosh.com; McGuffin, Stan <smcguffin@hsblawfirm.com>
Subject: Re: Call Schedule

Thank you all for making time for us again. And Kim, thank you very much for sending the information on the pre-purchase calls you have with potential buyers. That is part of the process we are trying to better understand. We are taking a look at the information.

Stan, Capers and I can all talk at 2pm tomorrow. I will send an invite with a call in number.

Sandra Kaczmarczyk

ALTON ASSOCIATES PLLC

4443 ALTON PLACE N.W.

WASHINGTON, DC 20016

(202) 344-5339

sandra@altonassoc.com

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On Wed, Feb 8, 2017 at 12:49 PM, Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov> wrote:

Hey Sandra:

We are available today until 3:00 p.m. and tomorrow between 2:00 and 5:00 p.m.

Thanks,

Cher

Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Thursday, January 26, 2017 12:16 PM
To: Jones, Kim A
Cc: Luke, Cheryl (ENRD); Karl.Fingerhood@usdoj.gov; Barnett, Doug (USASC); Finch, Rhelyn
Subject: Re: Call Regarding CNC Site and Ashley Bankruptcy Case

Absolutely. Happy to.

Sent from my iPhone

On Jan 26, 2017, at 12:15 PM, Jones, Kim A <Jones.Kima@epa.gov> wrote:

Thanks Sandra! If you would be so kind as to add Rhelyn Finch to this email for conference call in number info as well. Thank you.

From: Sandra Kaczmarczyk [<mailto:sandra@altonassoc.com>]
Sent: Thursday, January 26, 2017 12:11 PM
To: Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov>
Cc: Karl.Fingerhood@usdoj.gov; Jones, Kim A <Jones.Kima@epa.gov>; Barnett, Doug (USASC) <Doug.Barnett@usdoj.gov>
Subject: Re: Call Regarding CNC Site and Ashley Bankruptcy Case

Thank you. I will send an invite with a call in number.

Sent from my iPhone

On Jan 26, 2017, at 11:39 AM, Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov> wrote:

Hey Sandra:

We are available next Tuesday from 2:30 to 3:30 for a call.

Just send us your conference call info.

Cher

From: Sandra Kaczmarczyk [<mailto:sandra@altonassoc.com>]
Sent: Thursday, January 26, 2017 9:39 AM
To: Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>; Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>
Cc: McGuffin, Stan <smcguffin@hsblawfirm.com>; Mary Beth Deemer <MBDeemer@jonesday.com>; cgb@barrungermcintosh.com; Ethan Ware <eware@williamsmullen.com>
Subject: Call Regarding CNC Site and Ashley Bankruptcy Case

Karl and Cheryl,

Hope you both are doing well. Emailing to ask if you have time for a call next week in advance of the hearing on the testing motion filed by Ashley II of Charleston, LLC ("Ashley") in its bankruptcy proceeding. We would like to discuss our concerns regarding the Site investigation proposed by Ashley and the timing of testing as it relates to the sale of the CNC Site.

We are all available for a call any time after 2pm on Tuesday, January 31. Any chance you both have time to talk some time that afternoon?

Thanks.

Sandi

Sandra Kaczmarczyk

ALTON ASSOCIATES PLLC

4443 ALTON PLACE N.W.

WASHINGTON, DC 20016

(202) 344-5339

sandra@altonassoc.com

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Jones, Kim A

From: Sandra Kaczmarczyk <sandra@altonassoc.com>
Sent: Thursday, January 26, 2017 12:11 PM
To: Luke, Cheryl (ENRD)
Cc: Karl.Fingerhood@usdoj.gov; Jones, Kim A; Barnett, Doug (USASC)
Subject: Re: Call Regarding CNC Site and Ashley Bankruptcy Case

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Sent from my iPhone

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Cher

From: Sandra Kaczmarczyk [<mailto:sandra@altonassoc.com>]
Sent: Thursday, January 26, 2017 9:39 AM
To: Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>; Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>
Cc: McGuffin, Stan <smcguffin@hsblawfirm.com>; Mary Beth Deemer <MBDeemer@jonesday.com>; cgb@barrungermcintosh.com; Ethan Ware <eware@williamsmullen.com>
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Thanks.

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sandra@altonassoc.com

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Jones, Kim A

From: Bill McCarthy <bmccarthy@mccarthy-lawfirm.com>
Sent: Thursday, October 06, 2016 12:19 PM
To: Luke, Cheryl (ENRD)
Cc: Karl.Fingerhood@usdoj.gov; Jones, Kim A; Craig Briner (cbriner@greenhawkcorp.com); Harrison Penn
Subject: Re: Hurricane Matthew Impacts to the Columbia Nitrogen Site, Charleston, South Carolina

Thanks

--

G. William McCarthy, Jr., Esq.
McCarthy, Reynolds, & Penn, LLC
1517 Laurel Street (29201)
P.O. Box 11332
Columbia, SC 29211-1332
Phone: (803) 771-8836 ext 1
Direct: (803) 343-1000
Fax: (803) 753-6960
E-Mail: bmccarthy@mccarthy-lawfirm.com

On Oct 6, 2016, at 12:16 PM, Luke, Cheryl (ENRD) <Cheryl.Luke@usdoj.gov> wrote:

FYI

From: Jones, Kim A [<mailto:Jones.Kima@epa.gov>]
Sent: Thursday, October 06, 2016 9:49 AM
To: Ware, Ethan <eware@williamsmullen.com>; Mary Beth Deemer <MBDeemer@jonesday.com>; Capers G. Barr III <cgb@barrungermcintosh.com>
Cc: Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>; Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>; Mallary, Ken <Mallary.Ken@epa.gov>; Waters, Melissa <Waters.Melissa@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Weisinger, Keith <Weisinger.Keith@epa.gov>; Johnson, MaryC <Johnson.MaryC@epa.gov>
Subject: Hurricane Matthew Impacts to the Columbia Nitrogen Site, Charleston, South Carolina

Counsel for Columbia Nitrogen PRPs,

First, the EPA hopes you and your families are safe in light of the path of Hurricane Matthew and the evacuation of Charleston, South Carolina.

It is the EPA's policy to notify PRPs of certain obligations wherein a CERCLA Site may be impacted by a hurricane. The EPA would anticipate that the Columbia Nitrogen Site property could incur some erosional damage from the storm surge of Hurricane Matthew, especially the lower-elevation areas located adjacent to the salt marsh.

In this regard, PRPs at the Columbia Nitrogen Site, have a continuing obligation pursuant to the Unilateral Administrative Order (UAO) issued in December 2013, to task your consultants to make a site visit to access the damage once the storm passes, make repairs to damaged areas, and take any steps possible to help stabilize the land surface from future erosion.

Please forward to the EPA in writing, your assessment of the damage and steps/measures you took to repair any damage, and mitigate and stabilize erosion.

Again, please be safe and if you have any questions or concerns, please do not hesitate to contact me either via email or telephone at (404) 562-9553.

DOJ Counsel: Please forward to Ashley II of Charleston, Bankruptcy Counsel. Thank you.

Kim A. Jones
Assistant Regional Counsel
US EPA

Jones, Kim A

From: Jones, Kim A
Sent: Tuesday, July 19, 2016 10:14 AM
To: Waters, Melissa; Mallary, Ken
Subject: FW: Columbia Nitrogen

FYI-

From: Mary Beth Deemer [mailto:MBDeemer@JonesDay.com]
Sent: Monday, July 18, 2016 11:53 AM
To: Jones, Kim A <Jones.Kima@epa.gov>; cheryl.luke@usdoj.gov
Subject: Columbia Nitrogen

CONFIDENTIAL - SUBJECT TO F.R.E. 408

Dear Cheryl and Kim:

The purpose of this email is to advise you that PCS Nitrogen, Inc. and other parties found to have liability for Site conditions in the *Ashley II* litigation are developing a revised term sheet for a proposed settlement with EPA. The matters addressed in the term sheet/settlement would be: EPA's past costs; remaining work at the Site; and future redevelopment of the Site. The parties hope to finalize the term sheet shortly and submit it to EPA and DOJ for consideration.

If you have any questions, please do not hesitate to contact me.

Best regards,

Mary Beth

Mary Beth Deemer
Partner
JONES DAY® - One Firm WorldwideSM
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
Office +1.412.394.7920
Mobile +1.412.719.6923
mbdeemer@jonesday.com

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=====

Jones, Kim A

From: Ware, Ethan <eware@williamsmullen.com>
Sent: Friday, May 27, 2016 1:38 PM
To: Jones, Kim A
Subject: RE: Notice of Liability: Columbia Nitrogen Site

Kim-

Thanks. Appreciate the update. Have a good Memorial Day.

Ethan.

Ethan Ware
Attorney
Williams Mullen
1441 Main Street, Suite 1250
Columbia, SC 29201
T 803.567.4610
F 803.567.4601
eware@williamsmullen.com
www.williamsmullen.com

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From: Jones, Kim A [<mailto:Jones.Kima@epa.gov>]
Sent: Friday, May 27, 2016 1:37 PM
To: Ware, Ethan
Subject: RE: Notice of Liability: Columbia Nitrogen Site

You are absolutely right! It went to McNair. I'm sorry! We will resend. Sorry about the oversight.

By the way, the EPA forwarded a 104(e) Request for Information, dated May 18, 2016, to Ashley II regarding the Site disturbance you reported.

From: Ware, Ethan [<mailto:eware@williamsmullen.com>]
Sent: Friday, May 27, 2016 1:21 PM
To: Jones, Kim A <Jones.Kima@epa.gov>
Subject: Notice of Liability: Columbia Nitrogen Site

Ms. Jones

We understand from PCS Nitrogen, LLC, the United States may have forwarded to my prior law firm a Notice of Liability for Post Removal Site Control Plan at the Columbia Nitrogen Site for the Holcombe Fair Parties. If so, you may want to revise contact information for me to the address below and resend the letter to us at the address below.

Thank you in advance for your assistance. Once we have reviewed the Notice, we will (of course) respond in accordance with the client directive.

Ethan.

Ethan Ware
Attorney
Williams Mullen
1441 Main Street, Suite 1250
Columbia, SC 29201
T 803.567.4610
F 803.567.4601
eware@williamsmullen.com
www.williamsmullen.com

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Jones, Kim A

From: Thomas, Jessica <jthomas@williamsmullen.com>
Sent: Friday, May 13, 2016 2:11 PM
To: McGuffin, Stan; Karl.Fingerhood@usdoj.gov; Luke, Cheryl (ENRD); Jones, Kim A
Cc: Sandra Kaczmarczyk; Farrier, Jr., Richard A. (Richard.Farrier@klgates.com); Ware, Ethan; Capers G. Barr III (cgb@barrungermcintosh.com); Bill McCarthy (bmccarthy@mccarthy-lawfirm.com)
Subject: RE: Ashley: Tentative May 18 call at 10:30 re EPA Response Costs on CNC Site

Thursday PM works the best for Ethan Ware.

Jessica Thomas
Legal Assistant
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-----Original Message-----

From: McGuffin, Stan [mailto:smcguffin@hsblawfirm.com]
Sent: Friday, May 13, 2016 9:20 AM
To: Fingerhood, Karl (ENRD); Luke, Cheryl (ENRD); Kim A Jones
Cc: Sandra Kaczmarczyk; Farrier, Jr., Richard A. (Richard.Farrier@klgates.com); Ware, Ethan; Capers G. Barr III (cgb@barrungermcintosh.com); Bill McCarthy (bmccarthy@mccarthy-lawfirm.com)
Subject: RE: Ashley: Tentative May 18 call at 10:30 re EPA Response Costs on CNC Site
Importance: High

Below are some possible windows for a call to discuss settlement of the EPA response costs claims. I would ask that everyone on this email let me know which ones could work for them. There are deposition scheduled for the morning of May 19 that hopefully will be concluded by early afternoon. Thanks to all.

May 18 (Wednesday):
Noon

May 19 (Thursday)
2:00
3:00
4:00
5:00

May 20 (Friday)
Noon
1:00
2:00

3:00

4:00

-----Original Message-----

From: Fingerhood, Karl (ENRD) [mailto:Karl.Fingerhood@usdoj.gov]
Sent: Thursday, May 12, 2016 2:50 PM
To: McGuffin, Stan; Luke, Cheryl (ENRD); Kim A Jones
Cc: Sandra Kaczmarczyk
Subject: RE: Ashley: Tentative May 18 call at 10:30 re EPA Response Costs on CNC Site

Thursday and Friday (After 11:30) would work for me

-----Original Message-----

From: McGuffin, Stan [mailto:smcguffin@hsblawfirm.com]
Sent: Thursday, May 12, 2016 2:48 PM
To: Luke, Cheryl (ENRD) <CLuke@ENRD.USDOJ.GOV>; Fingerhood, Karl (ENRD) <KFingerhoo@ENRD.USDOJ.GOV>; Kim A Jones <Jones.Kima@epa.gov>
Cc: Sandra Kaczmarczyk <sandra@altonassoc.com>
Subject: RE: Ashley: Tentative May 18 call at 10:30 re EPA Response Costs on CNC Site

Are you available on Thursday or Friday (good times?) if I cannot line up everyone for Wednesday afternoon. Thank-you.

-----Original Message-----

From: Luke, Cheryl (ENRD) [mailto:Cheryl.Luke@usdoj.gov]
Sent: Thursday, May 12, 2016 2:05 PM
To: McGuffin, Stan
Cc: Fingerhood, Karl (ENRD); Kim A Jones
Subject: Re: Ashley: Tentative May 18 call at 10:30 re EPA Response Costs on CNC Site

Kim is unavailable between 10 AM and noon on Wednesday. I'm checking her availability in the afternoon. I believe she is available. When can you guys make yourselves available Wednesday afternoon? Thanks Cher

Sent from my iPhone

On May 12, 2016, at 11:07 AM, McGuffin, Stan <smcguffin@hsblawfirm.com<mailto:smcguffin@hsblawfirm.com>> wrote:

Just let me know when you confirm Kim's availability and I will circulate a call in invitation to the parties. Thanks.

<image001.gif><<http://www.hsblawfirm.com/home.php>>

Stanley H. McGuffin | Attorney | Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Phone: 803.779.3080 | Fax: 803.765.1243 | Direct: 803.540.7836 website<<http://www.hsblawfirm.com/home.php>> |
bio<<http://www.hsblawfirm.com/people.php?PeopleID=86>> | vCard<<http://www.hsblawfirm.com/vcard.php?PeopleID=86>> |
map<<http://maps.google.com/maps?q=1201+Main+Street,+Columbia,+SC&hl=en&ll=34.001407,-81.034126&spn=0.024264,0.055189&sll=37.0625,-95.677068&sspn=47.167389,113.027344&vpsrc=6&t=m&z=15>> |
email<mailto:smcguffin@hsblawfirm.com>

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Jones, Kim A

From: Ware, Ethan <eware@williamsmullen.com>
Sent: Tuesday, April 26, 2016 1:18 PM
To: Jones, Kim A; Mallary, Ken; Johnson, MaryC
Cc: Mary Beth Deemer; Capers G. Barr III
Subject: REV. 1: Columbia Nitrogen Site

To: EPA Region 4
From: Holcombe Fair Parties
Date: April 26, 2016
RE: Responses to EPA Region 4 Questions Regarding Site Disturbances (REV. 1)

QUESTION: Can you give me the timeframe from the date of your contractor's last authorized entry/presence on Site until the date of discovery of disturbance?

RESPONSE: ENTACT's last day on Site was in early April 2015. A final inspection with EPA and SCDHEC took place on April 22, 2015. As a results of that inspection, AECOM performed additional activities into early May 2015. These activities included:

- Place rip rap in SW corner of Robin Hood.
- Address low spots on Robin Hood.
- Remove silt and sediment in ditch SW of Robin Hood on Milford.
- Put silt fence in front of marsh.
- Repair silt fence north of marsh.
- Put grass mats on marsh slope

Groundwater monitoring wells were installed, then sampled January 15, 2016 at the Site by AECOM. As part of ongoing erosion control inspections, AECOM has conducted erosion control work at the Site. These erosion control measures were based on rills or washouts caused by excessive storm water flow through drainage pathways at the Site. The Site, including the area adjacent to the western most concrete pad, is routinely expected, and the disturbances documented in a report to EPA were not present during AECOM's last known visit to the site in **January 15, 2016**. The disturbance of the vegetative cover, subsoils at or near the concrete pads and Milford Road, and the subsurface containment chemistry required by the UAO were discovered **March 14, 2016**.

QUESTION: The lock which secures the gate, is it a pad lock with an access code?

RESPONSE: There are three gates that lead into the Site. The first is located just to the east of Robin Hood, and served as our main construction gate during RA activities, the second is located just west of Robin Hood where Milford Street extension turns to the north, and the third is located at the end of Milford Street extension. All three gates have combination locks. The combination codes were only known to AECOM until Greg Calhoun of AECOM was contacted by Christy Alan, counsel for Ashley II, on or about February 4, 2016. At that time, Ms. Alan requested AECOM provide code numbers for the fence locks in order to facilitate a DHEC wetlands inspection. Stuart Coleman of CC&T Real Estate contacted Ethan Ware asking for code information for the same reason. Ethan Ware contacted the wetlands staff of DHEC in Charleston, and the DHEC staff had no knowledge of a proposed DHEC wetlands inspection. After some back and forth with Ms. Alan, AECOM provided the code to Ms. Alan. The codes on all three gates were recently changed after AECOM completed repairs to the disturbance area adjacent to the concrete pad.

QUESTION: Site gate which was bent, was it a chain link fence?

RESPONSE: All gates are chain links. The gate adjacent to the western property boundary of Robin Hood (curve on Milford Street), was not replaced during RA activities. New fencing was tied into the existing gate at this location. The gate was bent prior to any work conducted by AECOM.

Ethan Ware.

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From: Jones, Kim A [<mailto:Jones.Kima@epa.gov>]
Sent: Tuesday, April 26, 2016 11:50 AM
To: Ware, Ethan
Subject: RE: Columbia Nitrogen Site

This is terrific info thanks!

From: Ware, Ethan [<mailto:eware@williamsmullen.com>]
Sent: Tuesday, April 26, 2016 11:43 AM
To: Jones, Kim A <Jones.Kima@epa.gov>
Cc: Mallary, Ken <Mallary.Ken@epa.gov>; Johnson, MaryC <Johnson.MaryC@epa.gov>
Subject: RE: Columbia Nitrogen Site

To: EPA Region 4
From: Holcombe Fair Parties
Date: April 26, 2016
RE: Responses to EPA Region 4 Questions Regarding Site Disturbances

QUESTION: Can you give me the timeframe from the date of your contractor's last authorized entry/presence on Site until the date of discovery of disturbance?

RESPONSE: ENTACT's last day on Site was in early April 2015. A final inspection with EPA and SCDHEC took place on April 22, 2015. As a results of that inspection, AECOM performed additional activities into early May 2015. These activities included:

- Place rip rap in SW corner of Robin Hood.
- Address low spots on Robin Hood.
- Remove silt and sediment in ditch SW of Robin Hood on Milford.
- Put silt fence in front of marsh.
- Repair silt fence north of marsh.
- Put grass mats on marsh slope

Groundwater monitoring wells were installed, then sampled January 15, 2016 at the Site by AECOM. As part of ongoing erosion control inspections, AECOM has conducted erosion control work at the Site. These erosion control measures were based on rills or washouts caused by excessive storm water flow through drainage pathways at the Site. The Site, including the area adjacent to the western most concrete pad, is routinely expected, and the disturbances documented in a report to EPA were not present during AECOM's last known visit to the site in **January 15, 2016**. The disturbance of the vegetative cover, subsoils at or near the concrete pads and Milford Road, and the subsurface containment chemistry required by the UAO were discovered **March 14, 2016**.

QUESTION: The lock which secures the gate, is it a pad lock with an access code?

RESPONSE: There are three gates that lead into the Site. The first is located just to the east of Robin Hood, and served as our main construction gate during RA activities, the second is located just west of Robin Hood where Milford Street extension turns to the north, and the third is located at the end of Milford Street extension. All three gates have combination locks. The combination codes were only known to AECOM until was contacted by counsel for Ashley II on or about February 4, 2016.. At that time, Ms. Christy F. Alan, Esquire as counsel for Ashley II requested AECOM to produce the code number for the fence locks in order to facilitate a DHEC wetlands inspection; when questioned by Ethan Ware, DHEC staff knew nothing of a wetlands inspection. AECOM provided the code to Ms. Alan. The codes on all three were recently changed after AECOM completed repairs to the disturbance area adjacent to the concrete pad.

QUESTION: Site gate which was bent, was it a chain link fence?

RESPONSE: All gates are chain links. The gate adjacent to the western property boundary of Robin Hood (curve on Milford Street), was not replaced during RA activities. New fencing was tied into the existing gate at this location. The gate was bent prior to any work conducted by AECOM.

Ethan Ware.

From: Jones, Kim A [<mailto:Jones.Kima@epa.gov>]
Sent: Wednesday, April 20, 2016 8:54 AM
To: Ware, Ethan
Cc: Mallary, Ken; Johnson, MaryC
Subject: RE: Columbia Nitrogen Site

As I draft the questions, I had some information perhaps you can help with:

Can you give me the timeframe from the date of your contractor's last authorized entry/presence on Site until the date of discovery of disturbance?

The lock which secures the gate, is it a pad lock with an access code?

Site Gate which was discovered bent, is it a chain link fence?

I just want to make sure I am describing characteristics of the Site with specificity.

Thanks.

From: Ware, Ethan [<mailto:eware@williamsmullen.com>]
Sent: Monday, April 18, 2016 2:29 PM
To: Jones, Kim A <Jones.Kima@epa.gov>
Cc: Mallary, Ken <Mallary.Ken@epa.gov>; Johnson, MaryC <Johnson.MaryC@epa.gov>
Subject: RE: Columbia Nitrogen Site

Ms. Jones-

Thank you for the update. As a follow-up, our recollection is the lenders/developers (?) were most insistent about the investigation of the pads and roads. Does EPA or has it sent a 104 to any of the related parties? Thanks.
Ethan.

From: Jones, Kim A [<mailto:Jones.Kima@epa.gov>]
Sent: Monday, April 18, 2016 2:22 PM
To: Ware, Ethan
Cc: Mallary, Ken; Johnson, MaryC
Subject: RE: Columbia Nitrogen Site

EPA reviewed your report. Through our DOJ counsel, the government made an inquiry to the Site Owner (Ashley II of Charleston) through its bankruptcy attorney, Bill McCarthy as to whether Ashley had any knowledge of the Site disturbance. Mr. McCarthy indicated that his client knew nothing about the Site disturbance. As a follow up, EPA will be sending a formal 104e Request for Information to Ashley regarding this incident. Based on the response from Ashley, EPA will evaluate whether an incident report would need to be filed and next steps.

However, as you are aware, Ashley is under an obligation, to maintain and control releases from its property. They are also obligated pursuant to the UAO to prevent trespassers.

Thank you for bringing this information to the EPA.

From: Ware, Ethan [<mailto:eware@williamsmullen.com>]
Sent: Monday, April 18, 2016 1:15 PM
To: Jones, Kim A <Jones.Kima@epa.gov>
Subject: Columbia Nitrogen Site

Ms. Jones-

Recently, we forwarded to EPA a report prepared by engineers performing the cleanup at Columbia Nitrogen Site, which reported damages to the vegetative cover at the site and required by the Unilateral Order issued by EPA. Can you update us on efforts EPA may be taking to determine who disturbed the closure cover or what actions EPA or the United States is taking to determine who did the work?

Ethan Ware.

Counsel for Holcombe Fair Parties

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